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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,998	02/09/2004	Alf Bernd Michael Von Merveldt	9650-7	2546

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MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
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EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/20/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/774,998	VON MERVELDT, ALF BERND MICHAEL	
	Examiner	Art Unit	
	Steven B. Pollicoff	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/21/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al., (US Pat 6,213,305) in view of Ross (US Pat 6,533,121).

Baker discloses a bulk bag (Fig 1 reference number 10) having flexible side walls; a bottom wall configured to define, with the sidewalls, a generally rectangular shape of bag and a pair of laterally spaced generally flexible sleeves (26) associated with the bottom wall and each of which operatively receives a generally rigid tubular element (28), and wherein each tubular element has, at one end thereof, outwardly directed/integral flange formations (Fig 5 reference number 60; see also column 4, lines 20-23), and means (72) at either end (both ends are identical) for inhibiting movement of said other end. Baker does not show "wherein each of the flexible sleeves are at

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least partially defined by the bottom wall and one of the flexible sidewall". However, Ross discloses a bulk bag having flexible sleeves defined by a bottom wall and sidewall (Ross Fig 6). Therefore, it would have been obvious to modify the sleeves of Baker so that they are partially defined by the sidewalls and bottom wall for the purpose of accommodating a discharge chute so that the bulk bag may be readily emptied while remaining fully palletized (column 3, lines 19-26).

With respect to claim 2, Baker discloses a bulk bag having flexible side walls; a bottom wall configured to define, with the sidewalls, a generally rectangular shape of bag and a pair of laterally spaced generally flexible sleeves associated with the bottom wall and each of which operatively receives a generally rigid tubular element, and wherein each tubular element is made to a generally rectangular cross-sectional configuration (Fig 9) and composed of a thermoplastic material (column 3, lines 7-9).

Baker does not show "wherein each of the flexible sleeves are at least partially defined by the bottom wall and one of the flexible sidewall". However, Ross discloses a bulk bag having flexible sleeves defined by a bottom wall and sidewall (Ross Fig 6). Therefore, it would have been obvious to modify the sleeves of Baker so that they are partially defined by the sidewalls and bottom wall for the purpose of accommodating a discharge chute so that the bulk bag may be readily emptied while remaining fully palletized (column 3, lines 19-26).

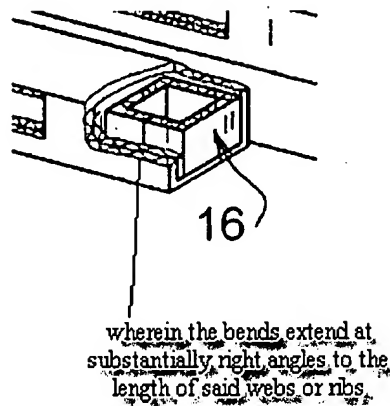
As to the product by process limitation "heat shaped to form bends", it is noted that the determination of patentability in a product by process claim is based on the product (i.e. the bends in the instant case) even though the claim may be limited and

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defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior art product was made by a different process. In re Thorpe 227 USPQ 964,966. Here the "bends" are present in the Baker reference and therefore the claim does not read over the prior art as to that limitation regardless of how the bend is made.

Claims 3,4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al., (US Pat 6,213,305) in view of Ross (US Pat 6,533,121) as applied to claim 2 and further in view of Brandes et al., (US Pat 6,041,718).

With respect 3,4 and 6, Baker fails to disclose that the thermoplastic material has two parallel spaced walls interconnected by a series of integral spaced parallel webs or ribs of material strengthening the sheet and wherein the bends defining said generally rectangular cross sectional tubular element extend at substantially right angles to the length of said webs or ribs. However, Brandes discloses plastic material (Brandes column 7, line 15) having two parallel spaced walls interconnecting a series of integral spaced parallel webs or ribs of material (i.e. multi-ply corrugated material) strengthening the sheet and wherein the bends extend at substantially right angles to the length of said webs or ribs (Brandes Fig 13 reference number 106 and reproduction of Fig 13 below; see also column 9 lines 27-34).



Partial view of Fig 13 of Brandes US Pat 6,041,718.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the tubular element of Baker with the tubular element (106) of Brandes having a series of integral spaced parallel webs or ribs of material, as taught by Brandes, for the purpose of creating a structure that is light in weight and provides great structural strength (column 1, lines 63-65).

With respect to claim 5, Baker does not disclose that free longitudinal edges of a tubular element configuration overlap and define a double wall at one side of the tubular element. However, Brandes does disclose a tubular element having free longitudinal edges that overlap and define a double wall at one side of the tubular element (Fig 13 at reference number 118 and 116). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the tubular element of Baker with the tubular element double walled configuration, as taught by Brandes, for the purpose of providing a stronger, lighter, collapsible tubular element for the bulk bag (column 1, lines 63-67 and column 2, lines 1-10).

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With respect to claim 7, Baker discloses that one end of each tubular element has integral flange formations formed by bends in the material at right angles to those defining the tubular shape (Fig 5 at reference number 36 extended).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al., (US Pat 6,213,305) in view of Ross (US Pat 6,533,121) as applied to claims 1 and 2 above and further in view of Coles (US Pat 4,274,540).

With respect to claims 9 and 10, Baker does not teach that the opposite end of each tubular element has a perforation through the material for operatively receiving a fastener attaching said opposite end to the adjacent wall of the bulk bag. However, Coles teaches at the opposite end of each tubular element there is a perforation through the material for operatively receiving a fastener attaching said opposite end to the adjacent wall of the bulk bag tubular member (Coles Fig 1 reproduced below).

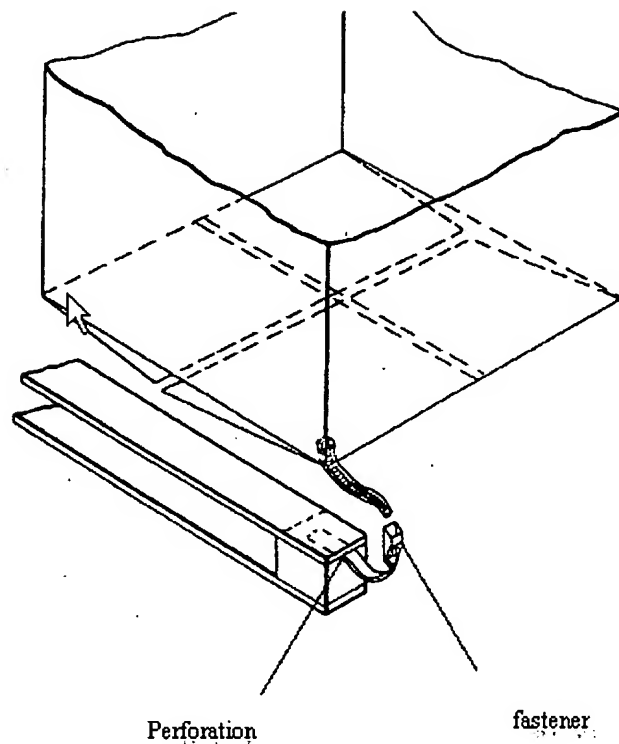


Fig 1 Coles (US Pat 4,274,540).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tubular elements of Baker to include perforations, as taught by Coles, for the purpose of better retaining the support/tubular element to the container/bulk bag.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al., (US Pat 6,213,305) as applied to claims 1 and 2 above and further in view of Ross (US Pat 6,533,121).

With respect to claims 11 and 12, Baker does not disclose that the laterally spaced sleeves are formed within the general rectangular shape of the bag such that the bottom of the bag is substantially coplanar with a bottom wall of each of the spaced

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sleeves. However, Ross discloses a bulk bag (Ross Fig 1) where the laterally spaced sleeves (18) are formed within the general rectangular shape of the bag such that the bottom of the bag is substantially coplanar with a bottom wall of each of the spaced sleeves (Fig 1 generally). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bulk bag of Baker so that the bottom of the bag was formed substantially coplanar with a bottom wall of the lateral sleeves, as taught by Ross, for the purpose of better stabilizing the bag when stacked for storage or when the bag is filled with bulk goods (column 2, lines 54-61).

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See also: **Response to Arguments**, arguments with respect to claim 7.

Response to Arguments

Applicant's arguments, see Remarks starting on page 5, filed 9/21/2006, with respect to the rejection(s) of claim(s) 1 and 2 under 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 103(a) as being unpatentable over Baker et al., (US Pat 6,213,305) in view of Ross (US Pat 6,533,121). Baker does not show "wherein each of the flexible sleeves are at least partially defined by the bottom wall and one of the flexible sidewall". However, Ross discloses a bulk bag having flexible sleeves defined by a bottom wall and sidewall

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(Ross Fig 6). Therefore, it would have been obvious to modify the sleeves of Baker so that they are partially defined by the sidewalls and bottom wall for the purpose of accommodating a discharge chute so that the bulk bag may be readily emptied while remaining fully palletized (column 3, lines 19-26).

Applicant's arguments, with respect to claim 8 have been fully considered and are persuasive. The rejection of claim 8 has been withdrawn.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In claims 3-5, the Brandes reference is used to show that it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the plastic tubular element of Baker with the tubular element in Brandes for a lighter, stronger tubular element. Examiner has clarified the motivation for making the combination rejection of claim 5.

With respect to claim 7, Applicant argues that Baker fails to teach integral flanges formed by bends in the material at right angles to those defining the tubular shape. This is unpersuasive because clearly Baker discloses integral flanges formed by bends in the material at right angles to those defining the tubular shape. *However, should applicant define the relationship of the flanges with respect to the length of the tubular element, as was done in claim 8, then examiner would consider claim 7 having allowable subject matter.*

Applicant's arguments with respect to claims 9 and 10 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claims 11 and 12 and in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Here Applicant argues that the combination of Ross with Baker renders the prior art invention of Baker unsatisfactory for its intended purpose and changes the principal of operation of the Baker bulk bag. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Baker clearly teaches the laterally spaced sleeves. Ross suggests at least that laterally placed sleeves can share a bottom wall and form the general rectangular shape of the bag (Ross Fig 1). It is therefore reasonable to conclude that the sleeves of Baker could share a bottom wall and still perform their intended use.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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